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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
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Plaintiff,
13
v.
14 CARLOS GARCIA WELDON,
SANDRA JUDITH CASTANEDA
15 CISNEROS, EDEL FELIX CASTRO, AND
FERMIN LOZANO GONZALEZ,
16
Defendants.
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CASE NO. 1:19-CR-00274 NONE SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: June 15, 2020
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

18 This case is set for status conference on June 15, 2020. On May 13, 2020, this Court issued
19 General Order 618, which suspends all jury trials in the Eastern District of California “until further
20 notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18
21 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s
22 judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after
23 May 2, 2021.¹ This and previous General Orders, as well as the declarations of judicial emergency,
24 were entered to address public health concerns related to COVID-19.

25 Although the General Orders and declarations of emergency address the district-wide health
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28 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision
2 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record
3 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-
4 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
5 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
6 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
7 findings on the record “either orally or in writing”).

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
9 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
10 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the
11 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
12 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.
13 § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of
14 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
15 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

16 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”
17 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
18 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
19 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
20 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d
21 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
22 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
23 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
24 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
25 by the statutory rules.

26 In light of the societal context created by the foregoing, this Court should consider the following
27 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
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justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through defendants’ counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on June 15, 2020.

2. By this stipulation, the parties now move to continue the status conference until November 16, 2020, and to exclude time between June 15, 2020, and November 16, 2020, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

3. The parties agree and stipulate, and request that the Court find the following:

a) On February 4, 2020, the government produced (either directly to defense counsel and/or made available for inspection and copying) discovery associated with this case which includes investigative reports, financial records, and other documents totaling more than 20,000 pages. On or about May 11, 2020, the government received additional documents from the agency that are being reviewed for discoverable material. The government anticipates completing a review of these documents and producing any supplemental discovery to defense by July 15, 2020.

b) Counsel for defendants desire additional time to complete a review of the discovery in this matter (including any supplemental discovery sent by the government), to conduct their investigations and research related to the charges, to consult with their respective clients, to discuss potential resolutions with their respective clients, and to otherwise prepare for trial.

c) Counsel for defendants believe that failure to grant the above-requested continuance would deny them the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

² The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

d) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act.

e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of June 15, 2020 to November 16, 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendants in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: June 9, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ MELANIE L. ALSWORTH
MELANIE L. ALSWORTH
Assistant United States Attorney

Dated: June 9, 2020

/s/ Preciliano Martinez
PRECILIANO MARTINEZ
Counsel for Defendant
CARLOS GARCIA WELDON

Dated: June 9, 2020

/s/ Mark Coleman
MARK COLEMAN
Counsel for Defendant
SANDRA JUDITH CASTANEDA CISNEROS

1 Dated: June 9, 2020

/s/ Arturo Hernandez
ARTURO HERNANDEZ
Counsel for Defendant
EDEL FELIX CASTRO

2
3
4 Dated: June 11, 2020

/s/ Curtis Rodriguez
CURTIS RODRIGUEZ
Counsel for Defendant
FERMIN LOZANO GONZALEZ

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7 **FINDINGS AND ORDER**

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9 IT IS SO ORDERED.

10 Dated: **June 11, 2020**

/s/ *Sheila K. Oberto*
UNITED STATES MAGISTRATE JUDGE